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Supreme Court, U. S.
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In The

Supreme Court of the United States

No. 76-2764

NOEL BERTHOLD BAUM,

Petitioner,

vs.

R. C. ANDERSON,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

GAHAGAN & GAHAGAN
MARVIN F. GAHAGAN
Attorney at Law
P. O. Box 70
Natchitoches, Louisiana 71457
Attorneys for Respondent

COOK, CLARK, EGAN, YANCEY & KING
600 Commercial National Bank Bldg.
Shreveport, Louisiana 71101

COCKLE PRINTING CO., 1822 St. Mary's Ave., Omaha

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R. C. Anderson, Respondent, opposes the instant petition for Writ of Certiorari, with good cause.

OPINIONS BELOW

The judgment of the Bankruptcy Court is reproduced as "Respondent's Appendix A".

The judgment of the U. S. District Court for the Middle District of Louisiana is reproduced on page 28 of Petitioner's brief.

The judgment of the U. S. Court of Appeals, Fifth Circuit (opinion by Chief Judge John R. Brown) is reproduced on page 21 of Petitioner's brief.

JURISDICTION

Petitioner seeks to invoke the jurisdiction of this Court under 28 U. S. C. A. 1254 (1), 28 U. S. C. A. 2101 (c), Section 24 (c) of the Bankruptcy Act (11 USC 47 (c)), and Section 302 of the Bankruptcy Act (11 USC 702).

QUESTION PRESENTED

Whether the Bankruptcy Court, the U. S. District Court and the U. S. Court of Appeals, Fifth Circuit, all committed reversible error in rejecting Petitioner's motion to force dismissal of Respondent's State Court foreclosure of a mortgage filed on Monday morning without notice or knowledge of Petitioner's Chapter XI proceeding filed on the late Friday afternoon preceding, where such foreclosure was immediately stayed voluntarily by Respondent upon his learning of the Chapter XI proceeding.

STATEMENT OF THE CASE

The facts of the case at bar are stated fully and accurately in the opinion of the U. S. Court of Appeals, Fifth Circuit (Petitioner's brief, page 21) and of the U. S. District Court (Petitioner's brief, page 28).

ARGUMENT

I.

The decisions below do not interfere with the orderly processes of bankruptcy.

The rigid approach taken by Petitioner would deny any and all discretion to the Bankruptcy Court in reference to the issues involved in the case at bar. Respondent submits that such a regimented system would deprive the Bankruptcy Courts of their much-needed discretion to seek and render justice on an individual case by case basis.

Petitioner would do away with any and all discretion of the Trial Court concerning application of the rule invoked. This contention seems wholly unrealistic and, no doubt, wholly unintended by the Supreme Court. There would be little need for trial courts if the rigid, inflexible approach urged by Petitioner would be adopted by our judicial system. Respondent respectfully submits that the discretion applied by the trial court in the case at bar was perfectly reasonable, sound, proper, well considered, and worked substantial justice between the parties.

II.

Petitioner has not been harmed or placed in jeopardy in any manner by the decisions below.

Respondent respectfully submits that the ruling of the Bankruptcy Court, District Court and Court of Appeal were eminently fair and correct, and that no harm has resulted to Petitioner by the filing of the executory process suit or the refusal by the lower courts to order its dismissal.

Petitioner argues that he has been harmed or will be harmed by the mere pendency of the state court suit, but he does not point out in what way such harm has come about or could come about. With all due respect, it seems that Petitioner is seeking to make much ado about nothing.

The rule relied upon by Petitioner is susceptible of the interpretation that commencement of the enforcement of a lien is not prohibited until after notice of the filing of a proceeding under Chapter XI is received by the creditor, after which notice, the creditor need only stay his enforcement, rather than dismiss it. Otherwise, how could the rule operate to bar such a creditor from *filing* to enforce his lien at a time when he was unaware, as in the case at bar, that the debtor had filed for relief under Chapter XI? The only plausible interpretation of the rule is that a creditor who files a lien enforcement proceeding, at a time when he does not know of the Chapter XI proceeding, need only stay his lien enforcement action, not dismiss it.

III.

The interpretation placed by the three courts below upon Rule 11-44 of the New Rules of Bankruptcy Procedure was fair and just.

Such interpretation does not violate, in any manner whatever, either the letter or the spirit of the rule. It seems impossible that the rule could be stretched to bar a creditor from filing a lien enforcement action when he has not even received any notice or knowledge that the debtor has filed for bankruptcy. Once the creditor has filed such an action, he should be required only to stay the lien enforcement after he receives notice of the bankruptcy. A formal dismissal of the lien enforcement suit should not be necessary.

IV.

The decisions of the three courts below contained no reversible error.

Respondent respectfully submits that the three lower courts all gave due consideration to Petitioner's contentions and each court in succession rejected all demands of Petitioner.

If this Court were to grant writs of certiorari, there would be an implication of reversible error on the part of all three courts below. Petitioner simply submits that there was no error, reversible or otherwise, in any of the decisions of bankruptcy court, U. S. District Court, and U. S. Court of Appeals, Fifth Circuit. The judgments of the three courts which have already given full consideration to Petitioner's claims should be accorded due respect and appropriate legal weight.

LEGAL AUTHORITIES

Respondent cites the following legal authorities:

1. Bankruptcy Act, Section 301 et seq.

2. 11 U. S. C. A., Section 701 et seq.

3. Bankruptcy Rules, rule 11-44 (a) 28 U. S. C. A.

4. Rule 752 BRP (which adopts Rule 52 of the Federal Rules of Civil Procedure providing that "findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses."

5. *Spach v. Strauss,* 5 Cir., 1967, 373 F. 2d 641, which held that there may not be a reversal on a factual issue in a bankruptcy case unless it is found to be clearly erroneous.

6. *Baum v. Anderson,* 5 Cir., 1976, No. 76-2764, in which the Court stated:

> "Because we give full voice to the rules calling for an automatic stay our decision will have far reaching effects on all the Chapters of the Act. Our decision is made with the recent changes of the Act and the Advisory Committee's Notes in mind. But it does not reach the limits which Baum seeks. We hold that while there is no question that the action in the state court is and should be stayed until the settlement of the Arrangement, the lower court was entitled to decide that it was not mandatorily required by the rules to dismiss the state court foreclosure since the equivalent protection would be afforded by the automatic stay which we now require to be entered formally.
>
> "While literally the commencement of an action after the Arrangement petition is filed invokes the rule automatically as we have held, there are questions, depending on the circumstances whether there is any reasonable need to order a dismissal of the action; whether a stay is in fact adequate.
>
> "Baum has received the benefits intended to be conferred by the Act and Rules either under Section 2 (a) 15 or BRP 11-44 (a). He is not being harassed by the mere filing of Anderson's foreclosure petition (quite the contrary, Anderson has fully co-operated with the court and his Arrangement plan was not defeated by the Bankruptcy Judge's refusal to dismiss the foreclosure).
>
> "The Bankruptcy Rules of Procedure cited above, 10-601, 12-43, 13-401, 401, 601, and 9-4 have more in common than just protection of the debtor from harassment or protection of the estate. To give the Bankruptcy Court ample leeway to meet all situations these Rules without exception grant the Bankruptcy Judge the power, for cause shown, to terminate, annul, modify, or condition the stay. This grant of power makes it unnecessary to agree with Baum's contention that the Court must dismiss every action filed subsequent to the XI petition."

CONCLUSION

In conclusion, Respondent stresses the facts that no harm has been done to Petitioner; that Respondent and undersigned counsel acted at all times in good faith and without knowledge that Petitioner had filed for relief under Chapter XI; that upon notice to Respondent and undersigned counsel, they immediately stayed all proceedings in the lien enforcement suit; and that the Bankruptcy

Court should have discretion to interpret the subject rule in a reasonable manner as in the case at bar.

Finally Respondent submits that it is very significant that Petitioner was wholly unable to cite for the Court any cases supporting the relief requested in the case at bar.

Accordingly, for the good and cogent reasons set forth above, Respondent prays that the petition for certiorari should be denied.

Respectfully submitted,

GAHAGAN & GAHAGAN

By: /s/ MARVIN F. GAHAGAN

Marvin F. Gahagan

P. O. Box 70

Natchitoches, Louisiana 71457

Attorneys for Respondent

February 1977.

APPENDIX

United States District Court
Middle District of Louisiana

IN PROCEEDINGS FOR AN ARRANGEMENT

NO. 76-012

IN RE NOEL BERTHOLD BAUM, DEBTOR

ORDER DISMISSING MOTION FOR SANCTIONS

After due notice by mail had been given to all parties in interest, this cause came on to be heard on March 4, 1976, upon the motion of the debtor herein seeking sanctions against R. C. Anderson, a creditor of the debtor who had (on Monday, January 12, 1976, at 10:30 a.m.) filed a petition for executory process against the debtor after the filing (on Friday, January 9, 1976, at 3:55 p.m.) of this petition in Chapter XI,

NOW, upon said motion and the evidence adduced at said hearing, and the Court having found that the petition of said R. C. Anderson for executory process had been filed in good faith, and without his having any knowledge of the filing of the petition for an arrangement,

IT IS ORDERED that the motion for sanctions be and it hereby is DISMISSED.

JUDGMENT RENDERED March 4, 1976.

JUDGMENT SIGNED at Baton Rouge, Louisiana, March 9, 1976.

/s/ Harvey H. Posner

HARVEY H. POSNER
BANKRUPTCY JUDGE

cc. Messrs. Franz Joseph Baddock and James Richard Mary, Attorneys for the Debtor

Mr. Marvin F. Gahagan, Attorney for Creditor, R. C. Anderson

I certify that this is a true copy of the original.

/s/ Harvey H. Posner

HARVEY H. POSNER
BANKRUPTCY JUDGE